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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1945

No. 361

BURTON-SUTTON OIL COMPANY, INCORPORATED,
PETITIONER,

vs.

COMMISSIONER OF INTERNAL REVENUE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 22, 1945.

CERTIORARI GRANTED FEBRUARY 11, 1946.

SUPREME COURT OF THE UNITED STATES

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[fol. a] [Caption omitted]

[fol. 1]

BEFORE UNITED STATES BOARD OF TAX APPEALS

Docket No. 110566

BURTON-SUTTON OIL COMPANY, INCORPORATED, Petitioner,

versus

COMMISSIONER OF INTERNAL REVENUE, Respondent

Appearances:

For Taxpayer: Wright Matthews, W. W. Thompson, Norman F. Anderson, Elias R. Kaufman.

For Comm'r: Frank B. Schlosser, L. R. Van Burgh.

DOCKET ENTRIES

1942-

Apr. 14. Petition received and filed. Taxpayer notified. Fee paid.

Apr. 15. Copy of petition served on General Counsel.

May 29. Answer filed by General Counsel.

May 29. Request for hearing in New Orleans, Louisiana, filed by General Counsel.

June 5. Notice issued placing proceeding on New Orleans, Louisiana, calendar. Answer and request served.

Dec. 10. Hearing set Jan. 18, 1943, in New Orleans, Louisiana.

1943

Jan. 12. Motion to remove case from New Orleans, Louisiana, calendar and place it on the next Houston, Texas, calendar filed by taxpayer. 1/12/43 Granted.

[fol. 2] Mar. 5. Hearing set April 5, 1943—Houston, Texas.

Apr. 5. Hearing had before Judge Leech on motion of petitioner for a continuance. Motion Granted. Continued to next session at Houston, Texas. Motion filed.

Sept. 16. Hearing set Oct. 25, 1943—Galveston, Texas.

Sept. 27. Stipulation to take deposition of W. W. Thompson filed.

1943

Oct. 8. Deposition of W. W. Thompson filed. General Counsel and taxpayer served by notary.

Oct. 25. Hearing had before Judge Black on merits. Submitted. Stipulation of facts filed. Briefs due 1-2-44. Replies Jan. 17, 1944.

Nov. 30. Transcript of hearing 10/25/43 filed.

Dec. 10. Motion for extension to Feb. 15, 1944, to file brief filed by taxpayer. 12/10/43 granted as to both parties.

1944

Feb. 10. Brief filed by taxpayer.

Feb. 15. Brief filed by General Counsel. Served 2/16 44.

Feb. 15. Copy of brief served on General Counsel.

Aug. 4. Findings of fact and opinion rendered. Black, J. Decision will be entered under Rule 50. Copies served.

Sept. 4. Computation as to deficiency filed by General Counsel.

Sept. 6. Hearing set 9/27/44 on settlement.

Sept. 27. Hearing before Judge Black; settlement under Rule 50. Settlement uncontested.

Sept. 30. Decision entered—Black, J., Div. 15.

Oct. 30. Entry of appearance of W. W. Thompson as counsel.

Oct. 31. Motion to withdraw Wright Matthews as counsel for taxpayer filed. 10/31/44 Granted.

[fol. 3] Nov. 21. Notice of appearance of Norman F. Anderson, C. P. A., Elias R. Kaufman and W. W. Thompson as counsel filed.

Nov. 29. Bond in the amount of $380,000.00 approved and ordered filed.

Dec. 11. Petition for review by U. S. Circuit Court of Appeals, Fifth Circuit, with assignments of error, filed by taxpayer.

Dec. 11. Proof of service filed by taxpayer.

Dec. 11. Praecipe for record filed by taxpayer.

Dec. 11. Proof of service filed.

Dec. 15. Petition for review by U. S. Circuit Court of Appeals, Fifth Circuit, with assignments of error filed by General Counsel.

Dec. 28. Proof of service filed (2).

BEFORE UNITED STATES BOARD OF TAX APPEALS

Docket No. 110566

BURTON-SUTTON OIL COMPANY, INCORPORATED, Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent.

PETITION—Filed April 14, 1942

The above named petitioner hereby petitions for a redetermination of the deficiencies set forth by the Commissioner of Internal Revenue in his notice of deficiency dated January 16, 1942, and as a basis of its proceeding alleges as follows:

1. The petitioner is a corporation organized and doing business under the laws of the State of Louisiana with [fol. 4] its principal office in Lake Charles, Louisiana. The returns for the periods here involved were filed with the Collector of Internal Revenue for the District of Louisiana, said Collector's office being located at New Orleans, Louisiana.

2. The notice of deficiency, a copy of which is attached hereto marked Exhibit A, was mailed to the petitioner on January 16, 1942.

3. The taxes in controversy are income and excess profits taxes for the fiscal years ended February 29, 1936, February 28, 1937 and February 28, 1938, and are in the following amounts:

	Income Tax	Excess Profits Tax
1936	$10,799.01	$667.42
1937	66,341.26	27,899.87
1938	82,655.94	32,157.86
	$159,796.21	$60,725.15

4. The determination of tax set forth in the said notice of deficiency is based upon the following errors:

(a) For the taxable year ended February 29, 1936, the Commissioner erred in eliminating $8,591.09 of depreciation which the petitioner claimed on its return for said year.

(b) For the taxable year ended February 29, 1936, the Commissioner erred in adding to income an amount of $17,406.19 which the petitioner had paid to the Gulf Refining Company under a contract hereinafter explained and which amount the petitioner did not report as its income for said year.

[fol. 5] (c) For the taxable year ended February 28, 1937, the Commissioner erred in disallowing $1,073.82 which the petitioner claimed in its return as a deduction on account of timber construction.

(d) For the taxable year ended February 28, 1937, the Commissioner erred in adding to the income of petitioner the amount of $232,498.94, which amount had been paid to the Gulf Refining Company by the petitioner under a contract hereinafter explained, and which amount the petitioner did not report as its income for said year.

(e) For the taxable year ended February 28, 1937, the Commissioner erred in not deducting from the petitioner's income the amount of $814.11 additional franchise tax for said year which has been asserted and paid by the petitioner to the State of Louisiana and the amount of $15,025.42 income tax which has been asserted by the State of Louisiana against this petitioner for the taxable year ended February 28, 1937.

(f) For the taxable year ended February 28, 1938, the Commissioner erred in disallowing $27,564.61 legal expenses which the petitioner claimed on its return for said year.

(g) For the taxable year ended February 28, 1938, the Commissioner erred in disallowing $815.15 of the depreciation which the petitioner claimed in its return for said year, instead of allowing $4,054.66 in addition to the amount of depreciation which petitioner claimed on its return for said year.

(h) For the taxable year ended February 28, 1938, the Commissioner erred in disallowing $948.33 as a deduction for timber construction, which the petitioner claimed in its return for said year.

[fol. 6] (i) For the taxable year ended February 28, 1938, the Commissioner erred in adding to the petitioner's in-

come the amount of $286,128.23, which said amount was paid by the petitioner to the Gulf Refining Company during said year as the result of the contract hereinafter explained, and which amount the petitioner did not include as its income for said year.

(j) For the taxable year ended February 28, 1938, the Commissioner erred in not deducting $1,237.83 additional franchise tax which was asserted by the State of Louisiana and which has been paid by the petitioner to the State of Louisiana for the taxable year ended February 28, 1938. For the taxable year ended February 28, 1938, the Commissioner also erred in not deducting from the petitioner's income the amount of $15,750.00 additional income tax which the State of Louisiana has asserted against the petitioner for the taxable year ended February 28, 1938.

5. The facts upon which the petitioner relies as a basis of this proceeding are as follows:

(a) Petitioner deducted on its income tax return for the year ended February 29, 1936, depreciation upon equipment used in connection with its oil and gas properties in the total amount of $33,167.45. The Commissioner has erroneously allowed depreciation on said equipment for said year in the total amount of $24,576.36 only, computed as shown in Exhibit B attached hereto. All of the equipment upon which said depreciation was computed was subject to heavy usage in the oil and gas business; and the estimated lives of the different classes of said equipment used by petitioner in computing depreciation were fair and reasonable estimates and result in a fair and reasonable amount of depreciation. Minor mathematical errors in computation were made by petitioner in its return. Attached hereto, marked Exhibit D, and made a part hereof, is a [fol. 7] computation of depreciation, based upon the fair and reasonable estimated lives used by petitioner in its return, which, after adjusting the minor errors in the return, reflects allowable depreciation of $33,070.42. Said amount of $33,070.42 is a fair and reasonable allowance to petitioner for depreciation for the fiscal year ended February 29, 1936.

(b) During the taxable year ended February 29, 1936, the petitioner paid to the Gulf Refining Company $17,406.19. This amount was paid to the Gulf Refining Company by

virtue of a contract which had been entered into between that company and one J. G. Sutton on February 18, 1933. The said J. G. Sutton transferred this contract to the petitioner on or about February 27, 1933. Under the terms of that contract the said J. G. Sutton bound himself to develop and operate the properties, meet the underlying and overriding royalty obligations, reimburse himself for all costs and expenses of operating the property, and account to and pay to the grantor fifty percent of the remaining portion of the oil and gas produced and sold from the said land. The restrictions placed upon the assignment and the delivery of possession of this lease to Sutton are such as to constitute a reservation by the said Gulf Refining Company of an interest in the lease. The Commissioner of Internal Revenue contends that the amounts paid the Gulf Refining Company represent a part of the cost of the lease and are therefore not to be deducted or excluded from taxable income, except as they are recovered through depletion. The Gulf Refining Company retained a substantial interest in this lease, and the amounts paid it were paid by virtue of its joint ownership of the properties and not in consideration of the transfer of said properties. Said amounts, therefore, constituted income of the Gulf Refining Company and never became the income of the petitioner.

[fol. 8] (c) During the fiscal year ended February 28, 1937, petitioner expended and incurred the amount of $1,073.82 which said amount was designated as "Timber Construction" and which petitioner deducted on its return for said year under said designation. This amount was expended and incurred for intangible costs in connection with timber work on its Well No. 20 and represents the costs of constructing derrick floor, pipe racks, pipe skids, derrick substructure, etc., in connetion with the drilling of said well. Said costs did not result in the acquisition of any asset having a salvage value; and said costs were properly deductible as intangible drilling costs in the computation of petitioner's taxable income for the year ended February 28, 1937. The Commissioner has erroneously capitalized said costs as representing a tangible asset subject to an allowance for depreciation in petitioner's hands.

(d) During the taxable year ended February 28, 1937, the petitioner paid to the Gulf Refining Company the sum of $232,498.94 under the contract of February 18, 1933,

described under subparagraph 5(b) hereinabove. The facts with reference to this payment under said contract of February 18, 1933, are the same as set forth under subparagraph 5(b) hereinabove, with the exception of the amount of said payment; and full reference, for all purposes as fully as though said facts were again here stated, is here made to said sub-paragraph 5(b) hereinabove.

(e) The State of Louisiana, since the filing of petitioner's income tax return for the taxable year ended February 28, 1937, has asserted and petitioner has paid additional franchise taxes for said year in the amount of $814.11; and the State of Louisiana has further asserted against petitioner additional income taxes for said year in the amount of $15,025.42. Petitioner filed its return for said year on the accrual basis; and said State of Louisiana taxes in the amounts of $814.11 and $15,025.42, re- [fol. 9] spectfully, are properly allowable deductions in the computation of petitioner's income and excess profits tax liability for the taxable year ended February 28, 1937. The Commissioner, however, has failed and refused to allow said amounts as deductions in his computation of petitioner's tax liability for said year.

(f) The Commissioner in his ninety day letter contends that the amount of $27,564.61 was incurred in connection with litigation covering a large tract of land and that the expenditure of said amount was in defending and protecting title to the property, and as such said expenditures are specifically excluded from allowable deductions under the regulations of said Commissioner of Internal Revenue. The facts are that this amount was expended in resisting condemnation proceedings instituted by the United States of America. The petitioner had possession of the property for a period of years, had developed the property, obtained production of oil and was deriving a large income therefrom. The nature of the litigation, its process through the Courts, and the final determination of the litigation, in so far as this petitioner is concerned, and in so far as the final order of the Court was concerned, constitute the attorney's fees as legitimate business expense paid to protect the petitioner's right to its undisturbed enjoyment of its property and the yields from said property; and as such the expenditure was clearly an ordinary and necessary business expense deductible from gross income.

(g) Petitioner is entitled to a deduction for depreciation on equipment used in connection with its oil and gas business for the taxable year ended February 28, 1938, in the amount of $63,882.91, as shown by computation attached hereto, marked Exhibit E, and made a part hereof. All of the equipment upon which said depreciation is allowable was subject to heavy usage in the oil and gas business; and the estimated lives of the different classes [fol. 10] of said equipment shown in said Exhibit E are fair and reasonable estimates and result in a fair and reasonable allowance for depreciation in the amount of $63,882.91, all as shown in said Exhibit E. Petitioner deducted in its return for said year ended February 28, 1938, depreciation in the amount of only $59,828.25, and therefore is entitled to an additional deduction for said purpose of $4,054.66 in excess of that claimed in the return. The Commissioner has erroneously allowed only $59,013.10 for depreciation, computed as shown by Exhibit C attached hereto.

(h) During the fiscal year ended February 28, 1938, petitioner expended and incurred the amount of $948.33 designated and deducted in petitioner's return for said years as "Timber Construction". This amount was expended and incurred for intangible costs in connection with timber work on its Well No. 18, which was a dry hole; and said amount represents the costs of constructing derrick floor, pipe racks, pipe skids, derrick substructure, etc., in connection with the drilling of said dry hole. Said costs did not result in the acquisition of any asset having a salvage value and said costs were properly deductible as intangible drilling costs in the computation of petitioner's taxable income for the year ended February 28, 1938. The Commissioner has erroneously capitalized said costs as representing a tangible asset subject to an allowance for depreciation in petitioner's hands.

(i) During the taxable year ended February 28, 1938, the petitioner paid to the Gulf Refining Company the sum of $286,128.23 under the contract of February 18, 1933, described under sub-paragraph 5(b) hereinabove. The facts with reference to this payment under said contract of February 18, 1933, are the same as set forth under said sub-paragraph 5(b) hereinabove except as to the amount of said payment; and full reference, for all purposes as

fully as though said facts were again here stated, is made to said sub-paragraph 5(b) hereinabove.

[fol. 11] (j) The State of Louisiana, since the filing of petitioner's income tax return for the taxable year ended February 28, 1938, has asserted and petitioner has paid additional franchise taxes for said year in the amount of $1,237.83. The State of Louisiana has further asserted against petitioner additional income taxes for said year in the amount of $15,750.00. Petitioner filed its income tax return for said year on the accrual basis; and said State of Louisiana taxes in the amounts of $1,237.83 and $15,750.00, respectively, are properly allowable deductions in the computation of petitioner's income and excess profits tax liability for the taxable year ended February 28, 1938. The Commissioner has failed and refused to allow said amounts as deductions in his computation of petitioner's tax liability for said year.

Wherefore, the petitioner prays that this Board may hear the proceedings and in its final order render a judgment that the petitioner owes no part of the deficiencies asserted by the Commissioner of Internal Revenue in letter dated January 16, 1942.

Wright Matthews (Wright Matthews), Attorney for Petitioner.

3017 Gulf Building, Houston, Texas.

Duly sworn to by Wm. T. Burton; jurat omitted in printing.

[fol. 12] EXHIBIT "A" TO PETITION

Form 1232 SN-IT-3

Treasury Department

Internal Revenue Service, New Orleans, Louisiana

Office of Internal Revenue Agent in Charge, New Orleans Division

Jan. 16, 1942.

Burton-Sutton Oil Company, Incorporated, Lake Charles, Louisiana.

SIRS:

You are advised that the determination of your income tax liability for the taxable year(s) ended February 29, 1936, February 28, 1937 and 1938, discloses a deficiency of $159,796.21 and that the determination of your excess-profits tax liability for the year(s) mentioned discloses a deficiency of $60,725.15, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiencies mentioned.

Within 90 days (not counting Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition [fol. 13] with the United States Board of Tax Appeals for a redetermination of the deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, New Orleans, Louisiana, for the attention of —. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or of the date assessment is made, whichever is earlier.

Respectfully, Guy T. Helvering, Commissioner.
(Signed) By William E. Logan, Internal Revenue Agent in Charge.

Enclosures: Statement. Form of waiver.

JML/lr.

Statement

Burton-Sutton Oil Company, Incorporated, Lake Charles, Louisiana

Tax Liability for the Taxable Years Ended February 29, 1936, and February 28, 1937, and 1938

[fol. 14]

Income Tax

Year	Liability	Assessed	Deficiency
1936	$20,698.31	$9,899.30	$10,799.01
1937	89,361.54	23,020.28	66,341.26
1938	92,397.94	9,742.00	82,655.94
Totals	$202,457.79	$42,661.58	$159,796.21

Excess-Profits Tax

1936	$1,073.77	$406.35	$667.42
1937	36,264.36	8,364.49	27,899.87
1938	32,795.22	637.36	32,157.86
Totals	$70,133.35	$9,408.20	$60,725.15

In making this determination of your income and excess-profits tax liability, careful consideration has been given to the reports of examination dated February 12, 1938, November 29, 1938, April 11, 1939, and March 18, 1940; to your protests dated March 4, 1939, May 9, 1939, April 25, 1940, and September 6, 1941; to the statements made at the conferences held on April 27, 1939, September 28, 1939, November 24, 1939, May 31, 1940, and June 25, 1941; and to your claim for refund filed on September 28, 1936.

It is held that payment made to Gulf Refining Company of Louisiana in each of the years 1936, 1937 and 1938 in accordance with the contract whereby you acquired the lease to a section of State school land in Cameron Parish, Louisiana, represent a part of the cost of that lease, and are therefore not to be deducted or excluded from taxable income, except as they are recovered through depletion. Since in each of the years under consideration percentage [fol. 15] depletion is greater than depletion based on cost of the lease, adjusted for depletion previously allowed, percentage depletion has been allowed in each year.

If a petition to the United States Board of Tax Appeals is filed against the deficiency proposed herein, the issue set forth in your claim for refund should be made a part of the petition to be considered by the Board in any redetermination of your tax liability. If a petition is not filed the claim for refund will be disallowed and official notice will be issued by registered mail in accordance with section 3772 of the Internal Revenue Code.

A copy of this letter and statement has been mailed to your representatives, Mr. W. W. Thompson, Weber Building, Lake Charles, Louisiana, Mr. Ulan Hill, Esperson Building, Houston, Texas, Mr. Wright Matthews, Esperson Building, Houston, Texas, Mr. Beverly Tobin, Esperson Building, Houston, Texas, in accordance with the power of attorney executed by you.

Taxable Year Ended February 29, 1936

Adjustments to Net Income

Net income as disclosed by return		$122,322.34
Unallowable deductions and additional income:		
(a) Excessive depreciation	$8,591.09	
(b) Excessive depletion	1,857.54	
(c) Loss on well equipment disallowed	356.03	
(d) Payments to Gulf Refining Company	17,406.19	28,210.85
Net income adjusted		$150,533.19

[fol. 16] Explanation of Adjustments

(a) It is held that you are entitled to deduction for depreciation in the amout of $24,576.36, as set out in statement of examination furnished to you under date of April 11, 1939, instead of the amount of $33,167.45 claimed on your return.

(b) It is held that you are entitled to deduction for depletion in the amount of $150,533.20, as set out in Exhibit A attached, instead of the amount of $152,390.74 claimed on your return.

(c) The deduction claimed on your return for loss of equipment resulting from blowout of well number 3 has been adjusted as follows:

Cost of equipment	$7,120.57
Less: Depreciation allowed or allowable	1,068.09
Loss sustained and allowable	$6,052.48
Loss deducted per return	6,408.51
Loss disallowed	$356.03

(b) This item represents payments made to Gulf Refining Company of Louisiana within the taxable year ended February 29, 1936, in accordance with the contract whereby you acquired the lease to a section of State school land in Cameron Parish, Louisiana.

Adjustment to Declared Value of Capital Stock

Value of capital stock as declared in your capital stock tax return for the year ended June 30, 1935	$1,029,994.17
[fol. 17] Increase in net income for the taxable year ended February 28, 1935	2,468.67
Value as adjusted	$1,032,462.84

Explanation of Adjustment

Net income for the taxable year ended February 28, 1935, as adjusted	$32,462.84
Net income as disclosed by return	29,994.17
Increase as above	$2,468.67

Computation of Tax

Excess-Profits Tax:

Taxable net income		$150,533.19
Less: 12½ percent of $1,032,462.84 adjusted value of capital stock as declared in your capital stock tax return for the year ended June 30, 1935		$129,057.86
Net income subject to excess-profits tax		$21,475.33
Excess-profits tax: 5 percent of $21,475.33		$1,073.77
Total excess-profits tax		$1,073.77
Excess-profits tax assessed:		
Original, account No. 400030	None	
Additional, January 1940 list, account No. 521207	$406.35	
Total assessed		$406.35
Deficiency of excess-profits tax		$667.42

[fol. 18] *Income Tax:*

Taxable net income		$150,533.19
Net income subject to income tax		$150,533.19
Income tax: 13¾ percent of $150,533.19		$20,698.31
Total income tax		$20,698.31
Income tax assessed:		
Original, account No. 400030	$16,819.32	
Additional, January 1940 list, account No. 521207	1,485.64	
Total assessed	$18,304.96	
Less: Previous allowance	8,405.66	
Net assessment		9,899.30
Deficiency of income tax		$10,799.01

Taxable Year Ended February 28, 1937

Adjustments to Net Income

Net income as disclosed by return		$138,474.46
Unallowable deduction and additional income:		
(a) Timber construction disallowed	$ 1,073.82	
(b) Payments to Gulf Refining Company	232,498.94	233,572.76
Total		$372,047.22
[fol. 19] Additional deductions:		
(c) Depletion	$53,591.85	
(d) Depreciation	1,551.81	
(e) Compensation claims	2,200.55	$57,344.21
Net income adjusted		$314,703.01

Explanation of Adjustments

(a) It is held that the amount of $1,073.82 expended for timber used in the construction of well number 18 represents a part of the cost of the well, and therefore not to be deducted or excluded from taxable income, except as recovered through depreciation. Refer to Exhibit A of report of examination dated November 29, 1938, a copy of which was furnished to you under date of January 7, 1939, for the computation of the amount of depreciation allowable for the taxable year.

(b) This item represents the amount of payments made to Gulf Refining Company of Louisiana within the taxable year ended February 28, 1937, in accordance with the contract whereby you acquired the lease to a section of State school land in Cameron Parish, Louisiana.

(c) It is held that you are entitled to deduction for depletion in the amount of $249,599.64, as set out in Exhibit A attached, instead of the amount of $196,007.79 claimed on your return.

(d) It is held that you are entitled to deduction for depreciation in the amount of $53,477.14, as set out in Ex-

hibit A of report of examination dated November 29, 1938, a copy of which was furnished to you under date of January 7, 1939, instead of the amount of $51,925.33 claimed on your return.

[fol. 20] (e) Deduction has been allowed for workmen's compensation claims paid in the taxable year in the amount of $2,200.55.

Computation of Tax

Excess-Profits Tax:

Taxable net income		$314,703.01
Less: 10 percent of $100,000.00 value of capital stock as declared in your capital stock tax return for the year ended June 30, 1936		10,000.00
Net income subject to excess-profits tax		$304,703.01
5 percent of declared value of capital stock		5,000.00
Balance		$299,703.01
Excess-profits tax:		
6 percent of $5,000.00		$300.00
12 percent of $299,703.01		35,964.36
Total excess-profits tax		$36,264.36
Excess-profits tax assessed:		
Original, account No. 853032	None	
Additional, May 26, 1939, #4 List, page 0, line 0	$8,364.49	
Total assessed		8,364.49
Deficiency of excess-profits tax		$27,899.87

Income Tax:

Normal Tax:	
Net income for excess-profits computation	$314,703.01
Less: excess-profits tax	36,264.36
Net income for normal tax computation	$278,438.65

[fol. 21]

8 percent of $2,000.00 (Over 0 to $2,000.00)		$160.00
11 percent of $13,000.00 (Over $2,000 to $15,000.00)		1,430.00
13 percent of $25,000.00 (Over $15,000 to $40,000.00)		3,250.00
15 percent of $238,438.65 (Over $40,000.00)		35,765.80
Total normal tax		$40,605.80
Surtax on Undistributed Profits:		
Net income for excess-profits computation		$314,703.01
Less:		
Excess-profits tax	$36,264.36	
Normal tax	40,605.80	76,870.16
Adjusted net income		$237,832.85
Undistributed net income		$237,832.85
7 percent of $23,783.29		$1,664.83
12 percent of $23,783.29		2,853.99
17 percent of $47,566.57		8,086.32
22 percent of $47,566.57		10,464.65
27 percent of $95,133.13		25,685.95
Total surtax		$48,755.74
Total normal tax		40,605.80
Total income tax (normal tax and surtax)		$89,361.54
Income tax assessed:		
Original account No. 853032	None	
Additional, May 26, 1939, #4 list, page 0, line 0	$23,020.28	
Total assessed		23,020.28
Deficiency of income tax		$66,341.26

[fol. 22] Taxable Year Ended February 28, 1938

Adjustments to Net Income

Net income as disclosed by return		$90,974.94
Unallowable deductions and additional income:		
(a) Legal expenses (disallowed)	$27,564.61	
(b) Excessive depreciation	815.15	
(c) Timber construction disallowed	948.33	
(a) Payments to Gulf Refining Company	286,128.23	315,456.32
Total		$406,431.26
Additional deduction:		
(e) Depletion		85,832.99
Net income adjusted		$320,598.27

Explanation of Adjustments

(a) The legal expenses incurred by you in connection with litigation covering a large tract of land within which is included the land on which you were conducting oil operations, are held to have been expended in defending and perfecting your title to the property, and as such, are specifically excluded from allowable deductions by article 24-2 of Regulations 94.

(b) It is held that you are entitled to deduction for depreciation in the amount of $59,013.10, as set out in Exhibit A of report of examination dated November 29, 1938, a copy of which was furnished to you under date of January 7, 1939, instead of the amount of $59,828.25 claimed on your return.

[fol. 23] (c) It is held that the amount of $948.33 expended for timber used for construction purposes represents a capital expenditure. Accordingly, the deduction claimed on your return has been disallowed and depreciation has been allowed on the amount capitalized as set out in Exhibit A of report of examination dated November 29, 1938.

(d) This item represents the amount of payments made to Gulf Refining Company of Louisiana within the taxable year ended February 28, 1938, in accordance with the contract whereby you acquired the lease to a section of State school land in Cameron Parish, Louisiana.

(e) It is held that you are entitled to deduction for depletion in the amount of $240,373.87, as set out in Exhibit A attached, instead of the amount of $154,540.88 claimed on your return.

Adjustment to Declared Value of Capital Stock

Value of capital stock as declared in your capital stock tax return for the year ended June 30, 1937	$238,474.46
Increase in net income for normal tax computation for the taxable year ended February 28, 1937	139,964.19
Value as adjusted	$378,438.65

Explanation of Adjustment

Net income for normal tax computation as adjusted	$278,438.65
Net income per return	138,474.46
Increase as above	$139,964.19

[fol. 24] Computation of Tax

Excess-Profits Tax:

Taxable net income	$320,598.27
Less: 10 percent of $378,438.65 adjusted value of capital stock as declared in your capital stock tax return for the year ended June 30, 1937	37,843.87
Net income subject to excess-profits tax	$282,754.40
5 percent of adjusted declared value of capital stock	18,921.93
Balance	$263,832.47

Excess-profits tax:		
6 percent of $18,921.93		$1,135.32
12 percent of $263,832.47		31,659.90
Total excess-profits tax		$32,795.22
Excess-profits tax assessed:		
Original, account No. 852959	None	
Additional, May 26, 1939, #4 list, page 0, line 2	$637.36	637.36
Deficiency of excess-profits tax		$32,157.86
Income Tax:		
Normal Tax:		
Net income for excess-profits computation		$320,598.27
Less: Excess-profits tax		32,795.22
Net income for normal tax computation		$287,803.05
8 percent of $2,000.00 (Over 0 to $2,000.00)		$160.00
11 percent of $13,000.00 (Over $2,000 to $15,000.00)		1,430.00
[fol. 25]		
13 percent of $25,000.00 (Over $15,000 to $40,000.00)		3,250.00
15 percent of $247,803.05 (Over $40,000.00)		37,170.46
Total normal tax		$42,010.46
Surtax on Undistributed Profits:		
Net income for excess-profits computation		$320,598.27
Less:		
Excess-profits tax	$32,795.22	
Normal tax	42,010.46	74,805.68
Adjusted net income		$245,792.59
Undistributed net income		$245,792.59
7 percent of $24,579.26		$1,720.55
12 percent of $24,579.26		2,949.51
17 percent of $49,158.52		8,356.95

22 percent of $49,158.52		10,814.87
27 percent of $98,317.03		26,545.60
Total surtax		$50,387.48
Total normal tax		42,010.46
Total income tax (normal tax and surtax)		$92,397.94
Income tax assessed:		
Original, account No. 852959	None	
Additional, May 26, 1939, #4 list, page 0, line 8	$9,742.00	9,742.00
Deficiency of income tax		$82,655.94

JPML/1r.

[fol. 26] Burton-Sutton Oil Company, Incorporated

Computation of Depletion

	Fiscal Year		
	1936	1937	1938
Gross income, less royalties	$554,755.81	$907,635.05	$874,086.80
Net income before depletion	$301,066.39	$564,302.65	$560,972.14
27½ percent of gross income	$152,557.85	$249,599.64	$240,373.87
50 percent of net income	$150,533.20	$282,151.33	$280,486.07
Depletion allowable	$150,533.20	$249,599.64	$240,373.87
Depletion deducted per return	152,390.74	196,007.79	154,540.88
Excessive depletion	$1,857.54		
Additional depletion		$53,591.85	$85,832.99

[fol. 27] EXHIBIT "B" TO PETITION

Revenue Agent's Computation of Depreciation for Fiscal Year Ended February 29, 1936
(From Revenue Agent's Report Dated April 11, 1939.)

Explanation of Adjustments:

(a) Depreciation deducted per return	$33,167.45
Depreciation allowable	24,576.36
Excessive	$8,591.09

Depreciation allowable has been computed in accordance with Article 23(l) 1 Regulations 86 as follows:

Item	Lease & Well Equipment	Drilling Equipment	Truck	Totals
Investment, Beginning	$ 46,226.25	$ 22,624.03	$606.25	$ 69,456.53
Additions	127,787.35	92,440.34		220,227.69
	$174,013.60	$115,064.37		$289,684.22
Retirements	7,120.57			7,120.57
Investment, End	$166,893.03	$115,064.37	$606.25	$282,563.65
Average for Year	$106,559.64	$ 68,844.20	$606.25	
	10%	20%	25%	
Reserve, Beginning	$ 6,359.04	$ 3,770.67	$303.12	$ 10,432.83
Charges	7,120.57			7,120.57
	($ 761.53)			$ 8,312.26
	10,655.96	13,768.84	151.56	24,576.36
	$ 9,894.43	$ 17,539.51	$454.68	$ 27,888.62

[fol. 28] EXHIBIT "C" TO PETITION

Revenue Agent's Computation of Depreciation for Fiscal Year Ended February 28, 1938
(From Revenue Agent's Report Dated January 7, 1939.)

(Schedule Continued on Following Page.)

Line		Date Acquired	Cost Per Books	Adjustments	Basis
1	Casing, Tubing, Screen, etc.	F. Y. 1934	22,135.62		22,135.62
2		F. Y. 1935	2,574.05		2,574.05
3		F. Y. 1936	105,608.09		105,708.09
4		F. Y. 1937	16,539.62		16,539.62
5		F. Y. 1938	3,530.98		3,530.98
			150,388.36		150,388.36
7	Timber Construction	F. Y. 1935	8,011.25		8,011.25
8		F. Y. 1936	7,917.28		7,917.28
9		F. Y. 1937		1,073.82	1,073.82
10				948.33	948.33
11			15,928.53		17,950.68
12	Field Equipment	F. Y. 1935	6,384.76		6,384.76
13	Pumps	F. Y. 1937	39,929.01		39,929.01
[fol. 29]					
14	Tanks	F. Y. 1937	10,786.09		10,786.09
14		F. Y. 1937	51,594.27		51,594.27
16	Various	F. Y. 1938	37,056.62		37,056.62
17			145,750.75		145,750.75
18	Drilling Equipment	F. Y. 1935	22,624.03		22,624.03

19	Drilling Equipment	F. Y. 1936	92,440.32		92,440.32
20			115,064.35		115,064.35
21	Truck	F. Y. 1935	606.25		606.25
22	Steel Derricks	F. Y. 1936	14,261.98		14,261.98
23		F. Y. 1938	1,722.69		1,722.69
24			15,984.67		15,984.67
25			443,722.91		445,745.06

[fol. 30]

Revenue Agent's Computation of Depreciation for Fiscal Year Ended February 28, 1938.
(From Revenue Agent's Report Dated January 7, 1939.)
(Continuation of Schedule from Preceding Page.)

Line From Preceding Page	Prior Depreciation R. A. R.-36	Unrecovered Cost	Life Used	Remaining Life 3-1-36	% Allowed Year Acquired	Depreciation 1938
1	5,533.90	16,601.72	10	7½		2,213.56
2	514.54	2,059.51	10	8		257.41
3	5,280.40	100,327.69	10	9½		10,560.81
4	None	16,539.62	10	10	½	1,653.96
5	None	3,530.98	10		½	176.55
6						
7	1,845.45	6,165.80	10	8		770.72
8	395.86	7,521.42	10	9½		791.73
9	None	1,073.82	10	10	All	107.38
10	None	948.33	10		All	94.83
11						
12	1,272.96	5,111.80	10	8		638.48
13	None	39,929.01	10	10	All	3,992.90
14	None	10,786.09	10	10	All	1,078.61
15	None	51,594.27	10	10	½	5,159.43
16	None	37,056.62	10		½	1,852.83
17						
18	12,426.68	10,197.35	4	2		5,098.67
19	11,555.04	80,885.28	4	3½		23,110.08
20						
21	454.69	151.56	3	1		None
22	648.27	13,613.71	11	10½		1,298.54
23	None	1,722.69	11		All	156.61
24						
25						59,013.10

[fol. 31]

EXHIBIT "D" TO PETITION

Depreciation

Fiscal Year Ended February 29, 1936

Date Acquired	Property	Cost	Estimated Life	Depreciation Prior Years	Depreciation Year Ended 2/29/36 Time	Depreciation Year Ended 2/29/36 Amount
1933-1934	Casing, Tubing & Screen	$ 24,709.67	9 Years	$1,392.41	12 Mos.	$2,745.52
1936	Casing, Tubing & Screen	105,608.09	10 Years	—0—	6 Mos.	5,280.41
1933-1934	Timber Construction	8,011.25	5 Years	1,074.73	12 Mos.	1,602.25
1936	Timber Construction	7,917.28	6 Years	—0—	6 Mos.	237.52
1934	Field Equipment	6,384.70	10 Years	638.48	12 Mos.	638.48
1934	Drilling Equipt.	22,624.03	3 Years	3,770.67	12 Mos.	7,541.34
1936	Drilling Equipt.	92,440.34	4 Years	—0—	7.2 Mos.	13,866.05
1936	Steel Derrick	14,261.98	5 Years	—0—	3.6 Mos.	855.72
1934	Truck	606.25	2 Years	303.12	12 Mos.	303.13
	Totals	$282,563.65		$7,179.41		$33,070.42

[fol. 32]

Exhibit "E" to Petition

Depreciation

Fiscal Year Ended February 28, 1938

(Schedule Continued on Following Page)

Line	Date Acquired	Property	Cost	Depreciation Prior Years
1	1933-'34	Casing, Tubing & Screen	$24,709 67	$6,608 89
2	1936	Casing, Tubing & Screen	105,608 09	15,841 22
3	1936-'37	Casing, Tubing & Screen	16,539 62	826 98
4	1937-'38	Casing, Tubing & Screen	3,530 98	—0—
5		Totals—Casing, Tubing & Screen	$150,388 36	$23,277 09
6	1933-'34	Timber Construction	$8,011 25	$3,447 70
7	1936	Timber Construction	7,917 28	1,029 25
8		Totals—Timber Construction	$15,928 53	$4,476 95
9	1934	Field Equipment	$6,384 76	$1,915 44
10	1936-'37	Field Equipment	39,929 01	3,992 09
11	1936-'37	Field Equipment	10,786 09	1,078 61
12	1936-'37	Field Equipment	51,594 27	2,579 71
13	1937-'38	Field Equipment	37,056 62	—0—
14		Totals—Field Equipment	$145,750 75	$9,566 66
15	1934	Drilling Equipment	$22,624 03	$16,410 69
[fol. 33]				
16	1936	Drilling Equipment	92,440 34	36,976 13
17		Totals—Drilling Equipment	$115,064 37	$53,386 82
18	1936	Steel Derricks	$14,261 98	$2,154 26
19	1937-'38	Steel Derricks	1,722 69	—0—
20		Totals—Steel Derricks	$15,984 67	$2,154 26
21		Totals	$443,116 68	$92,861 78

Depreciation
Fiscal Year Ended February 28, 1938
(Continuation of Schedule from Preceding Page)

Line From Preceding Page	Remaining Cost	Estimated Remaining Life—Beginning of Year	Depreciation Year Ended 2/28/38 Time	Amount
1	$18,100.78	7 Years	12 Mos.	$2,585 83
2	89,766.87	8½ Years	12 Mos.	10,560 81
3	15,712.64	9½ Years	12 Mos.	1,653 96
4	3,530.98	10 Years	6 Mos.	176 55
5	$127,111.27			$14,977 15
6	$4,563.55	3 Years	12 Mos.	$1,521 18
7	6,888.03	4 Years	12 Mos.	1,722 01
8	$11,451.58			$3,243 19
9	$4,469.32	7 Years	12 Mos.	$638 48
10	35,936.11	9 Years	12 Mos.	3,992 90
11	9,707.48	9 Years	12 Mos.	1,078 61
[fol. 34]				
12	49,014.56	9½ Years	12 Mos.	5,159 43
13	37,056.62	10 Years	6 Mos.	1,852 83
14	136,184.09			$12,722 25
15	$6,213.24	1 Year	12 Mos.	$6,213 34
16	55,464.21	28.8 Mos.	12 Mos.	23,110 08
17	$61,677.55			$29,323 42
18	$12,107.72	44.4 Mos.	12 Mos.	$3,272 36
19	1,722.69	5 Years	12 Mos.	344 54
20	$13,830.41			$3,616 90
21	$350,254.90			$63,882 91

Before United States Board of Tax Appeals

Answer—Filed May 29, 1942

Comes now the Commissioner of Internal Revenue, by his attoreny, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed herein admits and denies as follows:

1, 2, and 3. Admits the allegations contained in paragraphs 1, 2, and 3 of the petition.

[fol. 35] 4-(a) to (j), inclusive. Denies the allegations contained in paragraphs 4-(a) to (j), inclusive, of the petition.

5-(a). Denies the allegations contained in paragraph 5-(a) of the petition.

5-(b). Admits that during the taxable year ended February 29, 1936, the petitioner paid to the Gulf Refining Company $17,406.19; denies the remaining allegations in paragraph 5-(b) of the petition.

5-(c). Denies the allegations contained in paragraphs 5-(c) of the petition.

5-(d). Admits that during the taxable year ended February 28, 1937, the petitioner paid to the Gulf Refining Company the sum of $232,498.94; denies the remaining allegations in paragraph 5-(d) of the petition.

5-(e). Denies the allegations contained in paragraph 5-(e) of the petition.

5-(f). Admits that the Commissioner in his ninety-day letter determined that the amount of $27,564.61 was incurred in connection with litigation covering a large tract of land, and that the expenditure of said amount was in defending and protecting title to the property, and as such, said expenditures are specifically excluded from allowable deductions under the regulations of said Commissioner of Internal Revenue; denies the remaining allegations in paragraph 5-(f) of the petition.

5-(g) and (h). Denies the allegations contained in paragraphs 5-(g) and (h) of the petition.

[fol. 36] 5-(i). Admits that during the taxable year ended February 28, 1938, the petitioner paid to the Gulf Refining Company the sum of $286,128.23; denies the remaining allegations in paragraph 5-(i) of the petition.

5-(j). Denies the allegations contained in paragraph 5-(j) of the petition.

Denies generally and specifically each and every allegation contained in the petition not hereinbefore specifically admitted, qualified, or denied.

Wherefore, it is prayed that the appeal be denied.

(Signed) J. P. Wenchel, H J F (J. P. Wenchel),
Chief Counsel, Bureau of Internal Revenue.

Of Counsel: James L. Backstrom, Division Counsel; Homer J. Fisher, Special Attorney, Bureau of Internal Revenue.

HJF:mmd. 5/25/42.

[fol. 37] IN THE TAX COURT OF THE UNITED STATES

[Title omitted]

RESPONDENT'S COMPUTATION FOR ENTRY OF DECISION—Filed September 4, 1944

The attached proposed computation is submitted on behalf of the respondent to the Tax Court of the United States, in compliance with its opinion determining the issues in this proceeding.

This computation is submitted in accordance with the opinion of the Tax Court, without prejudice to the respondent's right to contest the correctness of the decision entered herein by the Tax Court, pursuant to the statutes in such cases made and provided.

(Signed) J. P. Wenchel, J. L. B. (J. P. Wenchel), Chief Counsel, Bureau of Internal Revenue.

Of Counsel: James L. Backstrom, Division Counsel; Frank B. Schlosser, Special Attorney, Bureau of Internal Revenue.

FBS:mjh.

[fol. 38] Recomputation

H-TC:Recomp.
H-FC:Recomp.
LMF.

In re: Burton-Sutton Oil Company, Incorporated
Lake Charles, Louisiana

Docket: #110566

Income Tax

Year Fiscal ended:	Liability	Assessed	Deficiency
February 29, 1936	$20,698.31	$9,899.30	$10,799.01
February 28, 1937	89,129.23	23,020.28	66,108.95
February 28, 1938	71,120.43	9,742.00	61,378.43

Excess-Profits Tax

February 29, 1936	$1,073.77	$406.35	$667.42
February 28, 1937	36,166.67	8,364.49	27,802.18
February 28, 1938	23,859.15	637.36	23,221.79

Fiscal Year Ended February 29, 1936

Net income as shown in the deficiency notice dated January 16, 1942	$150,533.19
As adjusted in accordance with the decision of The Tax Court of the United States	$150,533.19
Adjustments	None

[fol. 39] Computation of Tax

Year	Liability	Assessed	Deficiency
Excess-Profits Tax:			
Excess-profits tax liability as shown in the deficiency notice (No change made by the Tax Court)			$1,073.77
Excess-profits tax assessed:			
Original account #400030		None	
Additional, Jan. 1940 list, account #521207		$406.35	406.35
Deficiency of excess-profits tax			$667.42
Income Tax:			
Income tax liability as shown in the deficiency notice (No change made by The Tax Court)			$20,628.31
Income tax assessed:			
Original account #400030		$16,819.32	
Additional, Jan. 1940 list, account #521207		1,485.64	
Total		$18,304.96	
Less: Previous allowance		8,405.66	9,899.30
Deficiency of income tax			$10,799.01

Fiscal Year Ended February 28, 1937

Net income as shown in the deficiency notice dated January 16, 1942	$314,703.01
As adjusted in accordance with the decision of The Tax Court of the United States	$313,888.90
Deduction:	
1. Additional accrued taxes allowable	$814.11

[fol. 40] Explanation of Adjustment

1. The Tax Court of the United States holds that the amount of $814.11 asserted and paid in 1940 represents taxes accrued in 1937, and as such is an allowable deduction from gross income for 1937, under section 23(c) of the Revenue Act of 1936. This item was not allowed in the deficiency notice.

Computation of Tax

Excess-Profits Tax:

Taxable net income		$313,888.90
Less: 10% of $100,000.00, value of capital stock as declared in capital stock tax return for the year ended June 30, 1936		10,000.00
Net income subject to excess-profits tax		$303,888.90
Tax on $5,000.00 (5% of $100,000) at 6%		$300.00
Tax on $298,888.90 at 12%		35,866.67
Excess-profits tax liability		$36,166.67
Excess-profits tax assessed:		
Original account #853032	None	
Additional, May 26, 1939, #4 list, page 9, line 0	$8364.49	8,364.49
Deficiency of excess-profits		$27,801.18

Income Tax:

Normal Tax:	
Taxable net income	$313,888.90
Less: Excess-profits tax	36,166.67
Net income for normal tax computation	$277,722.23

[fol. 41]

Tax on $2,000.00 at 8%		$160.00
Tax on 13,000.00 at 11%		1,430.00
Tax on 25,000.00 at 13%		3,250.00
Tax at 237,722.23 at 15%		35,658.33
Total normal tax		$40,498.33

Surtax on Undistributed Profits:

Taxable net income		$313,888.90
Less:		
Excess-profits tax	$36,166.67	
Normal tax	40,498.33	76,665.00
Adjusted net income		$237,223.90
Undistributed net income		$237,223.90
Tax on $23,722.39 at 7%		$1,660.57
Tax on 23,722.39 at 12%		2,846.69
Tax on 47,444.78 at 17%		8,065.61
Tax on 47,444.78 at 22%		10,437.85
Tax on 94,889.56 at 27%		25,620.18
Total surtax		$48,630.90
Total normal tax		40,498.33
Income tax liability		$89,129.23
Income tax assessed:		
Original account #853032	None	
Additional, May 26, 1939, #4 list, page 0, line 0	$23,020.28	23,020.28
Deficiency of income tax		$66,108.95

[fol. 42] Fiscal Year Ended February 28, 1938

Net income as shown in the ninety-day letter dated January 16, 1942	$320,598.27
As adjusted in accordance with the decision of The Tax Court of the United States	$246,041.47

Deductions:

1. Additional depletion allowable	$45,754.36	
2. Additional accrued taxes allowable	1,237.83	
3. Legal expenses	27,564.61	$74,556.80

Explanation of Adjustments

1. In accordance with the Tax Court's opinion, the depletion deduction allowed in the deficiency notice of $240,373.87 is increased by $45,754.36 to $286,128.23, the amount stipulated by both parties as the correct amount allowable.

2. The Tax Court of the United States holds that the amount of $1,237.83 asserted and paid in 1940 represents taxes accrued in 1938, and as such is an allowable deduction from gross income for 1938 under section 23(c) of the Revenue Act of 1936. This item was not allowed as a deduction in the deficiency notice.

3. The Tax Court of the United States holds that the amount of $27,564.61 expended by petitioner in resisting certain condemnation proceedings is deductable as an ordinary and necessary business expense. None allowed in the deficiency notice.

[fol. 43] Adjustment to Declared Value of Capital Stock

Value of capital stock as declared in capital stock tax return for the year ended June 30, 1927	$238,474.46
Increase in net income for normal tax computation for the fiscal year ended February 28, 1937	139,247.77
Value as adjusted	$377,722.23

Explanation of Adjustment

Net income for normal tax computation as adjusted	$277,722.23
Net income per return	138,474.46
Increase as above	$139,247.77

Computation of Tax

Excess-Profits Tax:

Taxable net income		$246,041.47
Less: 10% of $377,722.23, adjusted value of capital stock as shown above		37,772.22
Net income subject to excess-profits tax		$208,269.25
Tax on $18,886.11 (5% of $377,722.23) at 6%		$1,133.17
Tax on $189,383.14 at 12%		22,725.98
Excess-profits tax liability		$23,859.15
Excess-profits tax assessed:		
Original account #852959	None	
Additional, May 26, 1939, #4 list, page 0, line 2	$637.36	637.36
Deficiency of excess-profits tax		$23,221.79

[fol. 44]

Income Tax:

Normal Tax:		
Taxable net income		$246,041.47
Less: Excess-profits tax		23,859.15
Net income for normal tax computation		$222,182.32
Tax on $2,000.00 at 8%		$160.00
Tax on 13,000.00 at 11%		1,430.00
Tax on 25,000.00 at 13%		3,250.00
Tax on 182,182.32 at 15%		27,327.35
Total normal tax		$32,167.35

Surtax on Undistributed Profits:

Taxable net income		$246,041.47
Less:		
Excess-profits tax	$23,859.15	
Normal tax	32,167.35	56,026.50
Adjusted net income		$190,014.97
Undistributed net income		$190,014.97
Tax on $19,001.50 at 7%		$1,330.11
Tax on 19,001.50 at 12%		2,280.18
Tax on 38,002.99 at 17%		6,460.51
Tax on 38,002.99 at 22%		8,360.66
Tax on 76,005.99 at 27%		20,521.62
Total surtax		$38,953.08
Total normal tax		32,167.35
Income tax liability		$71,120.43

[fol. 45]

Income tax assessed:

Original account #852959	None	
Additional, May 26, 1939, #4 list, page 0, line 2	$9,742.00	9,742.00
Deficiency of income tax		$61,378.43

IN THE TAX COURT OF THE UNITED STATES

STIPULATION OF FACTS—Filed at Hearing October 25, 1943

It is agreed by and between the parties to the above-entitled and numbered cause of action that the following facts shall be taken as true, subject, however, to the right of either party to introduce in evidence other and additional facts not inconsistent with the facts herein agreed to.

1

The petitioner is a corporation organized in February 1933 and doing business under the laws of the State of Louisiana with its principal office in Lake Charles, Lou-

isiana. The returns for the periods here involved were filed with the Collector of Internal Revenue for the District of Louisiana, said Collector's office being located at New Orleans, Louisiana. Petitioner kept its books and prepared its income tax return on the accrual basis.

2

On or about February 27, 1933, petitioner acquired from J. G. Sutton a contract which had been entered into be-
[fol. 46] tween the Gulf Refining Company of Louisiana and J. G. Sutton on February 18, 1933, reading as follows:

THE STATE OF TEXAS,
County of Harris:

Know All Men by These Presents: That, Gulf Refining Company of Louisiana, hereinafter styled "Grantor", for and in consideration of Ten Dollars ($10.00) and other valuable Considerations to it in hand paid by J. G. Sutton, receipt of which is hereby acknowledged, has sold, conveyed and transferred, and does hereby sell, convey and transfer unto the said J. G. Sutton, hereinafter styled "Grantee", all oil and gas rights, titles, interests or privileges given, conveyed and transferred by virtue of that certain mineral lease executed by Cameron Parish School Board to S. W. Sweeney, dated April 4, 1927, covering all of the whole of Section Sixteen (16), Township Fourteen (14) South, Range Thirteen (13) West, Louisiana Meridian, in Cameron Parish, Louisiana.

This assignment is made subject to the following terms and conditions:

1. Grantee binds and obligates himself to begin on or before thirty days from date, operations for the drilling of a well on said land and to continue his operations thereon with reasonable diligence to completion or abandonment in an honest, bona fide effort to find oil or gas in paying quantities on said land. After the completion of said well, Grantee shall continue such operations on said land as may be necessary to continue said lease in full force and effect. If, after completing said well, Grantee shall desire to cease operations on said land, he shall, upon demand, reassign said lease to Grantor not less than thirty days prior to the maturity date of any obligation accru-

ing after the date of the cessation of his operations on said land.

[fol. 47] 2. All oil and gas royalties which are due and payable under the terms of said lease herein referred to, as well as the overriding oil royalty provided for in the contract executed by Gulf Refining Company of Louisiana to S. W. Sweeney, on April 7, 1927, together with all the costs and expenses incurred by Grantee in his operations on said land, shall be borne and paid by Grantee, out of the remainder of the proceeds of the sale of any oil and/or gas produced from the land, after payment of the royalties hereinabove provided for, Grantee shall reimburse himself for the costs and expenses incurred and allowed by reason of his operations under said lease.

3. After Grantee has met the underlying and overriding royalty obligations referred to in paragraph 2 hereof and has been reimbursed out of the proceeds of the oil and gas produced from all such costs and expenses of operating upon said property as defined below, Grantee shall account to and pay Grantor 50% of the remaining portion of said proceeds of the oil and/or gas produced and sold from the said land. Accounting hereunder shall be at the price which Grantee received for the oil and/or gas produced from said land.

4. Accounting and settlement under this agreement shall be made at the end of each calendar month, and losses and arrears sustained by Grantee in his operations may be brought forward from month to month until extinguished. This provision shall apply to the cost of all drilling operations hereunder, including the cost of the first well herein provided for. If, within sixty days from the date of any settlement, it should develop that any error has been made in the statement upon which settlement is based, either by including erroneous charges or by omitting proper charges, then prompt adjustment shall be made; provided, Grantor shall never be required to reimburse Grantee for more than Grantor received at the time such settlement was made.

[fol. 48] Grantee shall have the right to retain and maintain out of the profits accruing from his operations the sum of Twenty-Five Thousand Dollars ($25,000.00) to cover the costs and expenses of operations during the next

succeeding calendar month; provided, that if Grantee should cease drilling operations for three consecutive months, then Grantor shall have the right to demand and receive from Grantee one-half of said sum so retained and maintained.

5. The costs and expenses allowed in this agreement and that may be deducted by Grantee from the proceeds of the Gross production of oil and gas from said land before a payment shall be made to Grantor shall consist of the following only, to-wit:

(a) The oil and gas royalty provided for in the original lease from Cameron Parish School Board to Gulf Refining Company of Louisiana above referred to, and the overriding oil royalty provided for in agreement between Gulf Refining Company of Louisiana, and S. W. Sweeney above referred to.

(b) The cost, repair, up-keep and maintenance of all material, machinery, equipment and property of every kind devoted exclusively to the development of and use upon the property covered by said lease, including employer's liability, derrick insurance, storage tanks, and drilling rig cost or rental, the said rig rental not to exceed $1,000.00 per month.

(c) The cost of all labor, whether clerical, common labor, or executive services devoted exclusively to operations upon or in connection with said property.

(d) The cost of treating to make marketable any oil produced hereunder.

[fol. 49] (e) The cost of properly disposing of salt water and in settling claims for damages arising from salt water.

(f) A charge for overhead equal to five per cent (5%) of the amount of money spent every month by Grantee under subdivision (c) hereof, said charge not to exceed $1,000.00 per month.

(g) All severance, ad valorem and other taxes of whatever kind levied against or on the oil and gas produced.

(h) A fair proportion of the salaries of any field superintendent, warehousemen or timekeepers employed in connection with the land herein described and other properties, based upon the gross expenditures on the property herein referred to in their ratio to the gross expenditures on other properties operated by Grantee in the said field.

(i) Reimbursement for all damages actually paid by Grantee arising from whatever cause in the course of operations under this contract, less and except those damages against which Grantee is protected by insurance, or otherwise.

6. Grantee shall keep accurate accounts of all expenses incurred in the operation of the property and all records relating to the expenses of such operations shall be accessible to Grantor at all reasonable times. Grantee shall at the end of each calendar month furnish to Grantor a full and complete statement showing all expenditures made by Grantee in connection with his operations on said land.

7. In no event shall Grantor be obligated to pay any of the costs or expenses incurred by Grantee in his operations under this agreement; nor shall it ever be called upon or required to repay to Grantee any sum paid to [fol. 50] Grantor at any subsequent period because of any arrears or losses incurred by reason of any subsequent losses.

8. It is understood and agreed that all sulphur rights and all rights to produce sulphur under and by virtue of the said lease herein referred to have been and are still reserved to Grantor, which shall have the exclusive right to enter upon the land for the production of sulphur therefrom. In the exercise of such rights the said Grantor shall have due regard for the rights of Grantee under this contract and shall so conduct its operations for the production of sulphur as to interfere with the operations of Grantee as little as possible. In no event, shall the operations for the production of sulphur interfere with operation on any well drilled by Grantee so long as it is producing oil in paying quantities.

9. Grantor shall have the right to purchase the oil produced from said land by paying therefor the average posted price paid for oil of like grade and gravity in the Coastal Oil Fields in Southwest Louisiana. The right to purchase shall be exercised in writing within thirty days after Grantee notifies Grantor that production in paying quantities has been secured and when exercised shall cover the next succeeding three calendar months; thereafter, Grantor shall continue to purchase said oil for like three months' periods until it gives Grantee at least thirty days notice

before the end of any such period of Grantor's intention to cease doing so. Grantee shall thereupon make such sales of said oil as Grantee may desire, but all sales by Grantee shall be upon the price basis herein set out, and no contract shall be made by him for the sale of said oil for a longer period than the next succeeding six months. Sixty days before the expiration of any contract that Grantee may make for the sale of the said oil, Grantee shall notify Grantor, and unless Grantor shall notify Grantee within thirty days of Grantor's desire to purchase said oil as [fol. 51] above provided, then Grantee shall have the right to contract for the sale of said oil as above set out. This plan shall be pursued during the life of this agreement.

Executed in Duplicate This the 18th day of February, 1933.

Gulf Refining Company of Louisiana, (Signed) by Underwood Nazro, Vice-President, (Signed) J. G. Sutton.

Attest:

L. E. Helenz, Asst. Secretary.

3

Shortly after acquisition petitioner, pursuant to terms of the above contract proceeded to the development and operation of the property and obtained oil and/or gas in paying quantities. In accordance with the provisions of paragraph 3 of the contract, the following sums were paid to the Gulf Refining Company of Louisiana during the taxable years indicated:

1936	$ 17,406.19
1937	232,498.94
1938	286,128.28

The foregoing amounts were claimed as deductions in the returns filed for the respective years. Respondent in his notice of deficiency has disallowed said deductions on the ground that the amounts paid to Gulf Refining Company represent additional costs of the property covered by the contract, recoverable through depletion allowances. [fol. 52] Depending upon the Board's final decision the allowable depletion will be determined under Rule 50.

4

Under date of November 27, 1940, the Department of Revenue of the State of Louisiana sent the petitioner a notice of an additional corporation franchise tax due for the taxable year ended February 28, 1937. This additional amount of franchise tax was paid by the petitioner on November 30, 1940. The Commissioner has failed and refused to allow this $814.11 as a deduction from the petitioner's income for the period ended February 28, 1937.

5

Under date of December 31, 1941 the Office of the Department of Revenue for the State of Louisiana asserted against petitioner additional income taxes for the fiscal year ended February 28, 1937 in the total amount of $15,025.42 and interest in the amount of $3,305.59. The petitioner, within the ninety-day period filed an appeal from this assertion of additional taxes with the Board of Tax Appeals of the State of Louisiana. That appeal is now pending and has not been decided. The Commissioner failed and refused to allow the petitioner deduction of either the $15,025.42 of addition tax or the $3,305.59 additional interest as deductions in the computation of petitioner's income and excess profits tax liability for the taxable year ended February 28, 1937.

6

During the taxable year ended February 28, 1938 the petitioner expended $27,564.61 legal expenses in resisting proceedings instituted by the United States of America [fol. 53] on certain of its property. The petitioner had possession of the property for a period of years, had developed the property, obtained production of oil and was deriving a large income therefrom.

7

Under date of November 27, 1940 the Department of Revenue of the State of Louisiana asserted against the petitioner additional corporation franchise taxes in the amount of $1,237.83 for the taxable year ended February 28, 1938. This tax was paid on November 30, 1940. The Commissioner of Internal Revenue has failed and refused

to allow this $1,237.83 as an allowable deduction in the computation of petitioner's income and excess profits tax liability for the taxable year ended February 28, 1938.

8

On December 31, 1941 the Department of Revenue for the State of Louisiana mailed to the petitioner a ninety-day letter asserting additional income taxes in the amount of $15,750.00 and additional interest in the amount of $2,520.00 for the fiscal year ended February 28, 1938. Within the ninety-day period the petitioner effected an appeal from the assertion of this additional taxes for the fiscal year ended February 28, 1938, and that appeal is now pending in said Board of Tax Appeals undisposed of. The Commissioner of Internal Revenue has failed and refused to allow the petitioner a deduction of either the $15,750.00 additional tax for said taxable year or the $3,150.00 additional interest for said year as a deduction in computing the petitioner's income and excess profits tax liability for the taxable year ended February 28, 1938.

[fol. 54]

9

For the fiscal year ended February 28, 1938, the respondent allowed depletion in the amount of $240,373.87. During this same fiscal year the petitioner paid the Gulf Refining Company under the contract set out in paragraph 2 hereof the sum of $286,128.23. If this Court does not permit the petitioner to eliminate from its taxable income the payment of $286,128.23, then the petitioner is entitled to an additional deduction for depletion in the fiscal year ended February 28, 1938 in the amount of $45,754.36.

Wright Matthews, Counsel for Petitioner, (Sgd.) J. P. Wenchel, JLB, (J. P. Wenchel), Chief Counsel, Bureau of Internal Revenue, Counsel for Respondent.

IN THE TAX COURT OF THE UNITED STATES

BURTON-SUTTON OIL COMPANY, INCORPORATED, Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket No. 110566. Promulgated August 4, 1944.

1. Petitioner acquired an oil and gas lease by assignment and contracted with the assignor among other things that "After Grantee has met the underlying and overriding royalty obligations referred to in paragraph 2 hereof and has been reimbursed out [fol. 55] of the proceeds of the oil and gas produced from all such costs and expenses of operating upon said property as defined below, Grantee shall account to and pay Grantor 50% of the remaining portion of said proceeds * * *." During the taxable years 1936, 1937 and 1938 it paid the grantor of the contract certain amounts representing the "50% of the remaining portion of said proceeds" called for in the contract. *Held*, the amounts so paid to the grantor are capital expenditures and represent a part of the cost of the lease to petitioner and are not to be excluded from petitioner's income except through deductions for depletion or as a part of the cost basis in case of a sale or other disposition of the property. *Quintana Petroleum Company*, 44 B. T. A. 624, affd. — Fed. (2d) —, followed.

2. In 1940, the State of Louisiana asserted against petitioner additional corporation franchise taxes for the taxable years 1937 and 1938 which petitioner paid in 1940. Petitioner kept its books upon the accrual basis. *Held*, the amounts asserted and paid in 1940 represented taxes accrued in 1937 and 1938, respectively, and as such were allowable deductions from gross income for the years 1937 and 1938 under section 23(c) of the Revenue Act of 1936.

3. In 1941, the State of Louisiana asserted against petitioner additional income taxes for the taxable years 1937 and 1938, together with interest thereon, all of which petitioner is contesting before the Board

of Tax Appeals of that State. *Held*, petitioner is not entitled to deduct any of these contested items from its gross income for the taxable years 1937 and 1938, respectively. *Dixie Pine Products Company* v. *Commissioner*, 320 U. S. 516.

[fol. 56] 4. During the taxable year 1938, petitioner expended a sum of money in resisting certain condemnation proceedings instituted by the United States which involved among other things a dispute over the boundaries of petitioner's property. The dispute was settled in petitioner's favor. *Held*, the expenditures in question are deductible as ordinary and necessary business expenses: *L. B. Reakirt*, 29 B. T. A. 1296, affd. *per curiam* 84 Fed. (2d) 996, followed.

Wright Matthews, Esq., for the petitioner.

Frank B. Schlosser, Esq., and *L. R. Van Burgh, Esq.* for the respondent.

This proceeding involves the determination by the respondent against petitioner of deficiencies in income and excess profits taxes for the taxable years 1936, 1937 and 1938 in amounts as follows:

Fiscal Year Ending	Income Tax	Excess Profits Tax
February 29, 1936	$10,799.01	$ 667.42
February 28, 1937	66,341.26	27,899.87
February 28, 1938	82,655.94	32,157.86

The above deficiencies result from several adjustments to the net income as reported by petitioner. Not all of these adjustments are contested. Some of the adjustments that were contested by appropriate assignments of error were abondoned at the hearing without prejudice to petitioner's right to raise similar issues in future years. These abandoned issues relate to claimed deductions for depreciation for 1936 and 1938, and claimed deductions for timber used for construction purposes in 1937 and 1938. Additional errors were assigned by petitioner relating to certain claimed deductions for state franchise and state [fol. 57] income taxes together with interest on the income taxes concerning which no adjustments were made by the respondent. The issues which have thus been raised by

appropriate assignments of error and remaining for our determination and decision are as follows:

1. Is petitioner entitled to exclude from taxable income in each of the taxable years the amount paid to the Gulf Refining Company of Louisiana under the terms of a contract whereby petitioner acquired an oil and gas lease?

2. Is petitioner entitled to deduct in the taxable years 1937 and 1938 the amounts of additional franchise taxes for those years which were asserted by the State of Louisiana in the year 1940 and paid by petitioner in 1940?

3. Is petitioner entitled to deduct in the taxable years 1937 and 1938 amounts representing additional state income taxes, together with interest thereon, which were asserted for those years by the State of Louisiana on December 31, 1941, where an appeal has been taken to the Board of Tax Appeals of the State of Louisiana and the additional taxes and interest have not been paid?

4. Is the sum of $27,564.61 paid in the taxable year 1938 for legal services rendered in connection with a condemnation suit brought against petitioner and others, by the United States, which involved the boundary lines to petitioner's property, deductible as an ordinary and necessary expense?

Findings of Fact

Petitioner is a corporation organized in February 1933 and doing business under the laws of the State of Louisiana with its principal office in Lake Charles, Louisiana. The returns for the taxable years here involved were filed [fol. 58] with the collector of internal revenue for the District of Louisiana at New Orleans. Petitioner kept its books and prepared its returns on the accrual basis.

Issue No. 1. The adjustments to petitioner's net income for the years 1936, 1937 and 1938, which resulted in assignments of error raising Issue No. 1 were explained by the respondent in the statement attached to the deficiency notice as follows:

> It is held that payments made to Gulf Refining Company of Louisiana in each of the years 1936, 1937 and 1938 in accordance with the contract whereby you acquired the lease to a section of State school

land in Cameron Parish, Louisiana, represent a part of the cost of that lease, and are therefore not to be deducted or excluded from taxable income, except as they are recovered through depletion. Since in each of the years under consideration percentage depletion is greater than depletion based on cost of the lease, adjusted for depletion previously allowed, percentage depletion has been allowed in each year.

On or about February 27, 1933, petitioner acquired from J. G. Sutton a contract which had been entered into on February 18, 1933 between Sutton as "Grantee" and the Gulf Refining Company of Louisiana hereinafter sometimes referred to as "Gulf" or as "Grantor". This contract recited that Gulf for and in consideration of $10 and other valuable considerations "has sold, conveyed and transferred, and does hereby sell, convey and transfer" unto the said Grantee "all oil and gas rights, titles, interests or privileges given, conveyed and transferred by virtue of that certain mineral lease executed by Cameron Parish School Board to S. W. Sweeney, dated April 4, 1927, covering all of the whole of Section Sixteen (16), Township Fourteen (14) South, Range Thirteen (13) West, Lou- [fol. 59] isiana Meridian, in Cameron Parish, Louisiana." The contract further recited that:

> This assignment is made subject to the following terms and conditions:
>
> 1. Grantee binds and obligates himself to begin on or before thirty days from date, operations for the drilling of a well on said land and to continue his operations thereon with reasonable diligence to completion or abandonment in an honest, bona fide effort to find oil or gas in paying quantities on said land. After the completion of said well, Grantee shall continue such operations on said land as may be necessary to continue said lease in full force and effect. If, after completing said well, Grantee shall desire to cease operations on said land, he shall, upon demand, reassign said lease to Grantor not less than thirty days prior to the maturity date of any obligation accruing after the date of the cessation of his operations on said land.

2. All oil and gas royalties which are due and payable under the terms of said lease herein referred to, as well as the overriding oil royalty provided for in the contract executed by Gulf Refining Company of Louisiana to S. W. Sweeney, on April 7, 1927, together with all the costs and expenses incurred by Grantee in his operations on said land, shall be borne and paid by Grantee, out of the remainder of the proceeds of the sale of any oil and or gas produced from the land, after payment of the royalties hereinabove provided for, Grantee shall reimburse himself for the costs and expenses incurred and allowed by reason of his operations under said lease.

[fol. 60] 3. After Grantee has met the underlying and overriding royalty obligations referred to in paragraph 2 hereof and has been reimbursed out of the proceeds of the oil and gas produced from all such costs and expenses of operating upon said property as defined below, Grantee shall account to and pay Grantor 50% of the remaining portion of said proceeds of the oil and or gas produced and sold from the said land. Accounting hereunder shall be at the price which Grantee received for the oil and/or gas produced from said land.

4. Accounting and settlement under this agreement shall be made at the end of each calender month, and losses and arrears sustained by Grantee in his operations may be brought forward from month to month until extinguished. • • •

Paragraph 5 of the contract specified what "costs and expenses allowed in this agreement and that may be deducted by Grantee from the proceeds of the Gross production of oil and gas from said land before a payment shall be made to Grantor". Paragraph 6 provided that the Grantee shall keep accurate accounts and furnish the Grantor with a complete statement at the end of each month. Paragraph 7 provided that in no event shall the Grantor be obligated to pay any of the costs or expenses incurred by the Grantee in his operations under the agreement. Under paragraph 8 "It is understood and agreed that all sulphur rights and all rights to produce sulphur under and by virtue of the said lease herein referred to

have been and are still reserved to Grantor * * *." The final paragraph was numbered 9 and provided for the manner in which the oil produced from the land was to be sold wherein the Grantor was given the right to purchase such oil at the average posted price if it so desired. [fol. 61] Shortly after acquisition of the contract petitioner, pursuant to the terms thereof, proceeded to the development and operation of the property and obtained oil and/or gas in paying quantities. In accordance with the above provisions of paragraph 3 of the contract, the following sums were paid to Gulf during the taxable years indicated:

1936	$ 17,406.19
1937	232,498.94
1938	286,128.28

The foregoing amounts were claimed as deductions in the returns filed for the respective years which were disallowed by the respondent in his notice of deficiency on the ground that the amounts paid Gulf represented additional costs of the property covered by the contract and which were recoverable through depletion allowances. The parties have stipulated that depending upon our final decision as to this issue "the allowable depletion will be determined under Rule 50".

Issue No. 2. Under date of November 27, 1940, the Department of Revenue of the State of Louisiana asserted against petitioner additional corporation franchise taxes in the amounts of $814.11 and $1,237.83 for the taxable years 1937 and 1938, respectively. These taxes were paid on November 30, 1940. The respondent has failed and refused to allow these amounts as allowable deductions in the computation of petitioner's income and excess profits tax liabilities for the taxable years in question.

Issue No. 3. Under date of December 31, 1941, the Office of the Department of revenue for the State of Louisiana asserted against petitioner additional income taxes for the taxable years 1937 and 1938 in the amounts of $15,025.42 [fol. 62] and $15,750, respectively, and interest thereon in the amounts of $3,305.59 and $2,520, respectively. Petitioner contested these assertions and filed an appeal with the Board of Tax Appeals of the State of Louisiana. At

the time of the hearing in the present proceeding that appeal was still pending and had not been decided. The respondent has failed and refused to allow any of the above amounts as deductions from gross income for the taxable years 1937 and 1938, respectively.

Issue No. 4. The adjustment to petitioner's net income for the fiscal year ending February 28, 1938, which resulted in the assignment of error raising Issue No. 4 was explained in the statement attached to the deficiency notice as follows:

> (a) The legal expenses incurred by you in connection with litigation covering a large tract of land within which is included the land on which you were conducting oil operations, are held to have been expended in defending and perfecting your title to the property, and as such, are specifically excluded from allowable deductions by article 24-2 of Regulations 94.

On July 19, 1937, the United States of America filed At Law No. 2841 a petition for condemnation in the District Court of the United States for the Western District of Louisiana, Lake Charles Division against "139,248.68 acres, more or less, of land in Cameron Parish Louisiana; Orange Cameron Land Company, Inc., a Texas corporation, et al., Defendants." Petitioner was made a defendant in this suit under paragraph 11 of the petition which was as follows:

> 11. The said defendants generally and all and singular the heirs, executors, administrators, representatives [fol. 63] of each and every of the above named persons; and all unknown owners, lienors, and claimants having or claiming any right, title, estate, equity, interest or lien; and all occupants, lessees, licensees and users and holders and owners of, and claimants to easements in, on, over or through said lands; and all persons, firms and corporations claiming any title or interest to or in any of said tracts of land; are made parties defendant to the end that they may come into Court and by proper pleadings make claim to said lands, or to the proceeds arising therefrom.

Petitioner's interest in this suit as a party defendant came about in the following manner. The land being condemned was to be used as a Federal bird preserve under

the jurisdiction of the United States Department of Agriculture, and took in several townships (except Section 16 in each township which was owned by the State) in Cameron Parish, Louisiana, between Sabine Lake on the West and Calcasieu Lake on the East and from about five miles north of the Gulf of Mexico to about 14 miles North thereof. The lease which petitioner acquired on or about February 27, 1933 and which is involved in Issue No. 1 herein was in this territory, and being a lease covering all of the whole of "Section Sixteen", Township 14 South, Range 13 West, Louisiana Meridian would have been exempt from the condemnation if there had been no dispute as to the location of said Section 16, which dispute is more fully explained below. From the time petitioner acquired this lease in 1933 up to the time the condemnation suit was filed in 1937, petitioner had drilled about 19 producing wells on the land, and petitioner's gross income therefrom was something over $1,000,000 a year for the fiscal years 1937 and 1938.

The Bureau of Biological survey of the Department of Agriculture made a survey of the 139,000 acres preparatory [fol. 64] to acquiring the land. Early in 1936 petitioner learned that the survey made by the Bureau of Biological Survey had the effect of moving all north and south section lines in Township 14 South, Range 13 West, about three miles to the west. This would have had the effect of leaving the oil field which petitioner had developed in what it contended was Section 16 in a section three miles to the east.

Petitioner then employed the law firm of Cline, Thompson and Lawes to represent it in connection with this controversy. Protests and arguments were made as to the incorrectness of the Bureau's survey which resulted in a resurvey, and on the second survey it was proposed to move the lines about ¾ths of a mile to the west, which still had the effect of placing the land on which petitioner's oil field had been developed in Section 15 of that Township rather than Section 16. The State of Louisiana owns Section 16, subject to the right of the Cameron Parish School Board to lease it for oil and receive the revenue from it. The School Board under its lease with petitioner which is described in Issue No. 1 herein received a 1/8th royalty.

During the early part of 1936 until the case was concluded in December 1937, W. W. Thompson of the law firm of Cline, Thompson and Lawes did practically no work except that in connection with this condemnation proceeding. This

work consisted of writing briefs, holding many conferences in Washington, Dallas, Galveston, Orange, New Orleans, Shreveport, Baton Rouge, and Lake Charles in efforts to convince the Orange Cameron Land Company principally and the Government, that the Bureau's survey was wrong and that a survey made by F. Shutts Sons in 1924 and 1925 was correct, and that the lines of Section 16 of Township 14 [fol. 65] South, Range 13 West, as established by the Shutts survey formed the correct boundary lines between that Section and the lands of the Orange Cameron Land Company that were being taken by the Government. Finally, a few days before the trial which was fixed for December 13, 1937, at a conference in Washington in the office of the Attorney General at which conference were present representatives of the Bureau of Biological Survey, the State of Louisiana through its Attorney General, Orange Cameron Land Company and others, Thompson was successful in convincing all the interested parties that the section lines as contended for by petitioner were correct and, based upon that agreement, judgment was entered in the case in so far as petitioner was concerned on December 14, 1937.

In the above-mentioned suit there had been no question as to the validity of petitioner's lease with the Cameron Parish School Board. The only question involved in so far as petitioner was concerned was the location of Section 16, Township 14 South, Range 14 West, and the boundaries thereof. If Section 16 were located on the ground where the Bureau of Biological Survey contended it was, petitioner would have a lease on barren prairie land with no production, whereas if it were where petitioner contended it was the lease would be on land with 19 producing wells. If petitioner had lost, it would have lost its entire oil field and the income therefrom. The final judgment placed the boundary of said Section 16 just a- petitioner had contended it should be placed, namely, in accordance with the survey made by Shutts in 1924 and 1925.

During the taxable year ended February 28, 1938, petitioner expended $27,564.61 in legal expenses (including a $25,000 fee to Cline, Thompson and Lawes) in resisting the above-mentioned condemnation proceedings instituted by the United States. On its return for the said taxable year [fol. 66] it deducted this amount as an ordinary and neces-

sary business expense. The respondent disallowed the item for the reasons given above.

Any part of the stipulated facts not included in the foregoing findings of fact are incorporated herein by reference.

OPINION

BLACK, Judge:

We shall consider the issues in the order previously stated.

Issue No. 1. Should the amounts of $17,406.19, $232,498.94 and $286,128.28 paid by petitioner to Gulf during the taxable years 1936, 1937 and 1938, respectively, be excluded from petitioner's income? These amounts were paid pursuant to paragraph 3 of the February 18, 1933, contract between Sutton and Gulf, which contract petitioner acquired from Sutton on or about February 27, 1933. In *Anderson v. Helvering*, 310 U. S. 404, 24 A. F. T. R. 967, the Supreme Court said:

> It is settled that the same basic issue determines both to whom income derived from the production of oil and gas is taxable and to whom a deduction for depletion is allowable. That issue is, who has a capital investment in the oil and gas in place and what is the extent of his interest.

The respondent determined and contends that under the contract of February 18, 1933, Gulf sold all of its "oil and gas rights, titles, interests or privileges" in the lease "in consideration of Ten Dollars ($10.00) and other valuable [fol. 67] considerations" part of which consisted of the "50% of the remaining portion of said proceeds of the oil and/or gas produced and sold from the said land" provided for in paragraph 3 of the contract. In other words, the respondent determined and contends that the above amounts paid to Gulf represent a part of petitioner's 'capital investment in the oil and gas in place' and as such should be added to petitioner's cost basis of the lease. On that theory the respondent has included in petitioner's gross income all the income derived by it from the production and sale of oil and gas from the lease, exclusive of the original oil royalty and the overriding oil royalty concerning which there is no dispute, and has allowed petitioner deductions for depletion of "27½ per centum of the gross

income from the property" under section 114(b)(3) of the Revenue Acts of 1934 and 1936.[1]

Petitioner contends that the contract of February 18, 1933, was a sublease rather than a sale; that Gulf retained [fol. 68] an "economic interest" in the oil and gas in place to the extent of the payments required under paragraph 3 of the contract; and that, therefore, the amounts paid to Gulf under paragraph 3 should be excluded from its income. Among the cases cited by petitioner in support of

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[1] The above amounts paid to Gulf, which were determined by the respondent to represent capital expenditures and a part of the cost of the lease, were therefore included as a part of petitioner's "gross income" under section 22 (a) of the Revenue Acts of 1934 and 1936, and as a part of petitioner's "gross income from the property" under section 114 (b) (3) for depletion purposes. Cf. *Helvering v. Twin Bell Oil Syndicate*, 293 U. S. 312, 14 AFTR 712; *Sunray Oil Company*, 3 T. C. 251, 254. The above-mentioned deductions for depletion of "27½ per centum of the gross income from the property" were allowed by the respondent for each of the taxable years before us on the ground that the respondent had also determined that such percentage depletion was greater than depletion based on cost under section 114 (b) (1) of the Revenue Acts of 1934 and 1936. The respondent now concedes that if he is correct in his contention that the amounts paid to Gulf represent a part of the cost to petitioner of the lease, then for the year 1938, the depletion based on cost under section 114 (b) (1) is greater than the percentage allowance under section 114 (b) (3), and as a result thereof the parties have stipulated relative to the year 1938 that "If this Court does not permit the petitioner to eliminate from its taxable income the payment of $286,128.23, then the petitioner is entitled to an additional deduction for depletion in the fiscal year ended February 28, 1938 in the amount of $45,754.36." Cf. *North American Oil Consolidated*, 12 B. T. A. 68 (bottom of p. 94 to middle of p. 95), appealed and reversed on other issues, 286 U. S. 417, 11 AFTR 16. On the other hand, if we agree with petitioner that the amounts paid to Gulf should be excluded from petitioner's taxable income, then petitioner's allowance for depletion would have to be redetermined and the parties have stipulated that this may be done under Rule 50.

these contentions are *Thomas* v. *Perkins*, 301 U. S. 655, 19 AFTR 538; *Holly Development Co.* v. *Commissioner*, 93 Fed. (2d) 146, 20 AFTR 393; and *Marrs McLean*, 41 B. T. A. 565, 573-575 (Gray Lease under Issue No. 2), affirmed on other issues, 120 Fed. (2d) 942, 27 AFTR 544.

Respondent relies upon the following cases: *Helvering* v. *O'Donnell*, 303 U. S. 370, 20 AFTR 785; *Helvering* v. *Elbe Oil Land Development Co.*, 303 U. S. 372, 20 AFTR 787; *Blankenship* v. *United States*, 95 Fed. (2d) 507, 20 AFTR 1132; *Anderson* v. *Helvering*, *supra*; and *Quintana Petroleum Company*, 44 B. T. A. 624.

We think the facts in the instant proceeding are practically on all fours with those in *Quintana Petroleum Company*, *supra*, on this issue. In that case respondent relied upon the same authorities as he relies upon here and we sustained him. In that case the pertinent agreement between the parties provided, among other things, as follows:

> • • • If as a result of Trinity's operations on said land, oil and gas should be produced therefrom in paying quantities, then, after paying all of the costs and expenses incurred in drilling, equipping, and operating said well, Trinity shall account to Gulf monthly for one-fourth (¼th) of the net proceeds of such operations. • • •

The agreement then specified the costs and expenses deductible by Trinity in computing the amount of the payments to be made to Gulf Production Co.

[fol. 69] In the instant case paragraph 3 of the agreement by which petitioner was obligated to pay Gulf 50 per cent of the net proceeds after deduction of expenses is in our judgment to all intents and purposes the same as the agreement in the *Quintana Petroleum Company* case, *supra*. As in that case the agreement here was followed by a detailed enumeration of the expenses which were to be deducted by petitioner before there was to be a 50 per cent division of the net proceeds with Gulf. Thus as we have already indicated, we see no distinction in substance between the facts of the two cases. On June 27, 1944, since the filing of briefs in this proceeding, the Fifth Circuit affirmed us in the *Quintana Petroleum Company* case. See *Quintana Petroleum Company* v. *Commissioner*, — Fed. (2d) —. Therefore, upon the authority of *Quintana*

Petroleum Company v. *Commissioner*, we sustain the respondent's determination upon this issue and in accordance with the stipulation the petitioner is "entitled to an additional deduction for depletion in the fiscal year ended February 28, 1938 in the amount of $45,754.36". Cf *Estate of Dan A. Japhet*, 3 T. C. 86.

Issue No. 2. Petitioner contends that the additional corporation franchise taxes for the taxable years 1937 and 1938 asserted by the State in 1940 and paid by petitioner in 1940 actually "accrued" as a liability during the respective taxable years in question and that since petitioner kept its books on the accrual basis, the taxes so asserted and paid are deductible for the taxable years 1937 and 1938, respectively.

Section 23 (c) of the Revenue Act of 1936 provides that in computing net income there shall be allowed as deductions "Taxes paid or accrued within the taxable year" with certain exceptions none of which are material here. Section 48 (c) of the same Act provides that when used in this title "The terms 'paid or incurred' and 'paid or [fol. 70] accrued' shall be construed according to the method of accounting upon the basis of which the net income is computed under this Part." Petitioner's method of accounting was the accrual method.

The respondent concedes that the rule is well established that taxes accrue when all events have occurred that fix the amount of the tax and determine the taxpayer's liability to pay it, citing *Oregon Pulp & Paper Co.*, 47 B. T. A. 772, 780, and the cases therein cited. The respondent contends, however, that petitioner has failed to show that all the events fixing the additional franchise tax liabilities here involved transpired during the years 1937 and 1938, and that, therefore, "there is no basis upon which this Court can permit the accrual and deduction of the taxes in the years 1937 and 1938". We think this contention by respondent cannot be sustained.

In *Oregon Pulp & Paper Co.*, *supra*, we held that the taxpayer there could not deduct in 1936, the year of payment, the amount of an additional excise tax demanded from the taxpayer by the State of Oregon for the year 1934. We said there that all events had transpired prior to 1936 which fixed the amount of the liability; that the taxpayer had erroneously computed the amount of its tax to the

state; and that the subsequent discovery of the error in 1936 "related back to the taxable year in which the mistake occurred". This is all the petitioner in the instant proceeding is claiming.

The liability for the franchise taxes in question was fixed by Louisiana state laws. These laws were in force during the taxable years 1937 and 1938. Petitioner had erroneously computed the amount of the liability. The subsequent discovery of the error and the correction thereof in 1940 related back to the taxable years 1937 and 1938 in which years the mistake occurred. *Oregon Pulp & Paper* [fol. 71] *Co., supra*, p. 780. We hold that the amounts of $814.11 and $1,237.83 are allowable deductions for the taxable years 1937 and 1938, respectively, under section 23 (c), *supra*.

Issue No. 3. The question involved in this issue is substantially the same as the one that was recently decided by the Supreme Court in *Dixie Pine Products Company* v. *Commissioner*, 320 U. S. 516. Both parties in their briefs seem to agree that the Supreme Court's decision in that case is controlling. In its brief petitioner concedes that "The income taxes therefore will be deducted under this decision of the Supreme Court when the litigation is finally adjudicated." We hold that the same rule applies also to the interest items in question. Section 23 (b) of the Revenue Act of 1936 provides for the allowance as deductions of "All interest paid or accrued within the taxable year on indebtedness * * *." Here the taxpayer is contending before the Board of Tax Appeals of the State of Louisiana that it is not indebted to the State for the amounts on which the interest is based. We hold that petitioner is not entitled to any deductions for the taxable years 1937 and 1938 on account of either the contested additional income taxes or the interest thereon, the amounts of which are set out in our findings of fact. *Dixie Pine Products Company* v. *Commissioner*, *supra*.

Issue No. 4. Section 23 (a) of the Revenue Act of 1936 as amended by section 121 of the Revenue Act of 1942 provides that in computing net income there shall be allowed as deductions "All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business * * *." Petitioner contends that the

item of $27,564.61 here in question is deductible under this provision of the statute, and cities *Welch* v. *Helvering*, 290 U. S. 111, 12 AFTR 1456; *L. B. Reakirt*, 29 B. T. A. 1256, [fol. 72] affirmed *per curiam* 84 Fed. (2d) 996, 18 AFTR 277; *Commissioner* v. *Chicago Dock & Canal Co.*, 84 Fed. (2d) 288, 17 AFTR 1277; and *Commissioner* v. *Heininger*, 320 U. S. 467.

Section 24 (a)(2) of the Revenue Act of 1936 provides that in computing net income no deduction shall in any case be allowed in respect of "Any amount paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate." Pursuant to section 62 of the Revenue Act of 1936, the respondent prescribed and published as a needful regulation for the enforcement of section 24 (a)(2), Article 24-2, Regulations 94, which among other things provides that "The cost of defending or perfecting title to property constitutes a part of the cost of the property and is not a deductible expense." In referring to an identical provision of Regulations 86, the Tenth Circuit in *Farmer, et al.* v. *Commissioner*, 126 Fed. (2d) 542, 28 AFTR 1378, affirming on this point *Central Material & Supply Co.*, 44 B. T. A. 282, said:

> This regulation finds general support in the decisions of the Courts. The authorities quite generally hold that expenditures made in defense of a title upon which depends the right to receive oil and gas royalty payments are capital expenditures and not deductible as ordinary business expenses. Croker v. Helvering, 67 App. D. C. 226, 91 F. 2d 299; Murphy Oil Co. v. Burnet, 9 Cir., 55 F. 2d 17, 26; Blackwell Oil & Gas Co. v. Commissioner, 10 Cir. 60 F. 2d 257. Petitioners did more than litigate the right to receive oil royalty payments. The title to the oil and gas lease under which they received these payments depended upon the title to the land. Without title to the land they had nothing. It was therefore necessary for them to defend and establish the title to the land in order to retain their interest in the oil and gas. The decision of the [fol. 73] Commissioner and of the Board in this respect is approved.

To the same effect is *Jones' Estate v. Commissioner*, 127 Fed. (2d) 231, 29 AFTR 226, and *Mosmer v. Welch*, 97 Fed. (2d) 471, 24 AFTR 532. We think it is true, as stated by the Court in *Farmer, et al. v. Commissioner, supra*, that "the authorities quite generally hold that expenditures made in defense of title upon which depends the right to receive oil and gas royalty payments are capital expenditures and not deductible as ordinary business expenses."

While the general rule is as above stated, the Board held in *L. B. Reakirt, supra*, that attorney fees paid by a taxpayer engaged in the real estate and investment business in resisting an illegal attempt by a city to condemn and acquire certain of his property are deductible as ordinary and necessary expenses of such business. Our decision in the *Reakirt* case was affirmed C. C. A., Sixth Circuit *per Curiam supra*. We do not believe that the *Reakirt* case has been overruled by the later decisions which we have cited above. There can be no doubt that suit at law No. 284 filed by the United States of America in the District Court of the United States for the Western District of Louisiana, described in our findings of fact, was a condemnation suit. If the United States had prevailed against petitioner, who became a party to that suit, all of petitioner's 19 producing oil wells would have been taken. Petitioner employed counsel and defended against the Government's effort to condemn its property upon the ground that its properties were not included in the proper boundaries of the lands which the Government was seeking to condemn. Petitioner prevailed in this contention and judgment was entered by the United States District Court in petitioner's [fol. 74] favor. While it is unquestionably true that the principal question involved in the condemnation suit in so far as the Government and petitioner were concerned was the correct location of boundary lines, it is also true that the suit was a condemnation suit and that as a result of the judgment petitioner's property upon which its 19 producing oil wells were located was not taken by the United States Government. We think the expenses aggregating $27,564.61, which petitioner expended to prevent its property being taken, should be allowed as ordinary and necessary business expenses incurred in resisting condemnation proceedings under authority of *L. B. Reakirt, supra*. The fact that the taxpayer in the *Reakirt* case was engaged in the real estate and investment business whereas the taxpayer

in the instant case is engaged in the production and sale of oil is, we think, without any important significance. The important factor in each case is that the expenditures in question were made in preventing the taxpayer's property from being taken in a condemnation proceeding. Article 24-2, Regulations 94 is not applicable to such a state of facts.

On Issue No. 4 petitioner is sustained.

Reviewed by the Court.

Decision will be entered under Rule 50.

DISSENTING OPINION

TURNER, J., dissenting:

Assuming the soundness of the conclusion reached in *L. B. Reakirt*, 29 B. T. A. 1296, which, in my opinion, is not free from doubt, I am still unable to agree with the majority that that case is decisive of the question in the fourth issue above. The question here is one of property boundary. If the boundary line was located as the petitioner contended, there was no question as to petitioner's title as lessee to the lands on which its oil wells were located, and the property was not within the claim of the Government. If on the other hand, the bound- [fol. 75] ary line was located as contended by the Federal Government, petitioner had no title as lessee or otherwise to the lands it had developed. It seems to me thus apparent that petitioner's expenditures were in defense of the title to its property and being such were capital expenditures, not deductible as ordinary and necessary expenses. *Central Material & Supply Co.*, 44 B. T. A. 282, affirmed 126 Fed. (2d) 542; and *Jones' Estate* v. *Commissioner*, 127 Fed. (2d) 231, affirming 43 B. T. A. 691. The fact that the question on title arose in a condemnation suit, is in my opinion, of no moment. I accordingly note my dissent.

Murdock, Mellott, Arnold, and Kern, JJ., agree with this dissent.

(Seal.)

IN THE TAX COURT OF THE UNITED STATES

Docket No. 110566

BURTON-SUTTON OIL COMPANY, INCORPORATED, Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent

DECISION

Pursuant to the determination of the Court as set forth in its Findings of Fact and Opinion promulgated August 4, 1944, the respondent herein filed a proposed recomputation on September 4, 1944, which was not contested by petitioner when called for hearing September 27, 1944, now therefore, it is

Ordered and Decided: That there are deficiencies in income tax and excess profits taxes for the fiscal years ended [fol. 76] February 29, 1936, February 28, 1937 and February 28, 1938, in the following amounts:

	Income Tax	Excess-Profits Tax
1936	$10,799.01	$ 667.42
1937	66,108.95	27,802.18
1938	61,378.43	23,221.79

Enter: Entered Sep. 30, 1944.

(Signed) Eugene Black, Judge. (Seal.)

IN UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

PETITION OF BURTON-SUTTON OIL COMPANY, INCORPORATED, FOR REVIEW BY THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT OF A DECISION BY THE TAX COURT OF THE UNITED STATES—Filed December 11, 1944

To the Honorable Judges of the United States Circuit Court of Appeals for the Fifth Circuit:

Burton-Sutton Oil Company, Incorporated, your petitioner by its attorneys, Norman F. Anderson, Elias R.

Kaufman and W. W. Thompson, respectfully petitions this Honorable Court to review a decision of the Tax Court of the United States entered on September 30, 1944.

I. Jurisdiction

Your petitioner is a corporation duly organized and existing under the laws of the State of Louisiana, and has its [fol. 77] principal place of business at Lake Charles, Louisiana.

Your petitioner filed its income and excess-profits tax returns for the years in question, namely, the fiscal years ended February 29, 1936, February 28, 1937 and February 28, 1938, with the Collector of Internal Revenue at New Orleans, Louisiana, whose office is located within the jurisdiction of the United States Circuit Court of Appeals for the Fifth Circuit, where this review is sought:

The controversy comes up for review as follows: The respondent sent your petitioner a notice of deficiency on January 16, 1942, showing deficiencies in income and excess-profits tax liabilities for the said fiscal years. On April 14, 1942, your petitioner filed its petition in the Tax Court of the United States seeking a redetermination of its tax liabilities for each of the said years. The respondent filed an answer on May 29, 1942, praying that the appeal be denied. After hearing, the Tax Court promulgated its Findings of Fact and opinion August 4, 1944. Decision was rendered and entered September 30, 1944.

Jurisdiction in this Court to review the decision of the Tax Court of the United States is founded on sections 1141 and 1142 of the Internal Revenue Code.

II. Nature of Controversy

This case involves income and declared value excess-profits tax liabilities. The Tax Court entered its decision for deficiencies as follows:

Year Ended	Income Tax	Excess-Profits Tax
February 29, 1936	$10,799.01	$ 667.42
February 28, 1937	66,108.95	27,802.18
February 28, 1938	61,378.43	23,221.79

[fol. 78] These deficiencies grew out of adjustments made by the respondent to your petitioner's tax returns including the addition to taxable income of the following amounts:

Year Ended	Additions
February 29, 1936	$ 17,406.19
February 28, 1937	232,498.94
February 28, 1938	286,128.28

which represented payments made by your petitioner to the Gulf Refining Company.

The Gulf Refining Company held an original lease on certain potential mineral land. It entered into a contract with J. G. Sutton which permitted and required Sutton to explore the leased lands for oil and gas, and required that fifty (50) per cent of the net proceeds from oil and gas be paid to the Gulf Refining Company. The "net proceeds" were to be determined according to particular contract provisions. Petitioner acquired Sutton's rights. Petitioner's exploration proved the lease productive. The aforesaid payments were due Gulf Refining Company as its share of the net proceeds. In addition to the said payments, and among other things, the Gulf Refining Company retained out of the leasehold rights:

(1) An overriding royalty in favor of S. W. Sweeney.

(2) All sulphur rights.

(3) The right to purchase all oil produced.

(4) The right to terminate Sutton's rights in the lease at least thirty (30) days before the expiration of the original lease.

[fol. 79] All facts with respect to this issue were stipulated by the parties and were adopted by the Tax Court.

The respondent (Commissioner) contends that the payments represent a part of the cost of the lease to your petitioner and are, therefore not to be deducted or excluded from taxable income except as they are recovered through depletion. Your petitioner's position is that the payments represent ordinary income of the Gulf Refining Company from oil and gas wells and do not constitute gross income to your petitioner, or in the alternative, that the payments are allowable deductions as rentals, royalties, or other or-

"It is plain that respondent's legal expenses were oth 'ordinary and necessary' if those words be given eir commonly accepted meaning. For respondent to nploy a lawyer to defend his business from threatened estruction was 'normal'; it was the response ordiarily to be expected. Cf. Deputy v. du Pont, 308 U. S. 88, 495; Welch v. Helvering, 290 U. S. 111, 114; Kornauser v. United States, *supra*. Since the record contains no suggestion that the defense was in bad faith r that the attorney's fees were unreasonable, the exenses incurred in defending the business can also be ssumed appropriate and helpful, and therefore 'necesary.' Cf. Welch v. Helvering, *supra*, 113; Kornhauser . United States, *supra*, 152."

Trust u/w of Mary Lily (Flagler) Bingham v. Comoner of Internal Revenue, decided June 4, 1945, the 09} Supreme Court, in holding that attorney's fees by a trustee for legal services concerning "(1) litigain which the trustees unsuccessfully contested a dekey claim based on taxable gain to the estate, (2) payof a legacy, and (3) problems arising from the expiraof the trust and the disposition of its assets," were deble as a business expense, said:

"• • • Section 23(a)(2) does not restrict deductions to those litigation expenses which alone produce ncome. On the contrary, by its terms and in analogy with the rule under Sec. 23(a)(1), the business expense section, the trust, a taxable entity like a business, may leduct litigation expenses when they are directly conected with or proximately result from the enterprise—the management of property held for production of income. Kornhauser v. United States, *supra*, 152-153; Commissioner v. Heininger, *supra*, 470-471."

also *Welch v. Helvering*, 290 U. S. 111, 114; *A. Harris o. v. Lucas*, 48 F. 2d 187; *Bliss v. Commissioner of Inal Revenue*, 57 F. 2d 984; *Commissioner of Internal nue v. Chicago Dock & Canal Co.*, 84 F. 2d 288.

he Tax Court correctly decided that these expenditures an ordinary and necessary business expense and as were deductible in the tax year in which such payments made.

[fol. 100] JUDGMENT

Extract from the Minutes of July 6th, 1945

No. 11275

BURTON-SUTTON OIL COMPANY, Incorporated,

versus

COMMISSIONER OF INTERNAL REVENUE

This cause came on to be heard on the petition of Burton-Sutton Oil Company, Incorporated, for a review of a decision of The Tax Court of the United States, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the decision of the said Tax Court in this cause be, and the same is hereby, affirmed.

"LEE, Circuit Judge, concurs in the result."

[fol. 101] CLERK'S CERTIFICATE

UNITED STATES OF AMERICA:

UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

I, Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 87 to 100 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 11275, wherein Burton-Sutton Oil Company, Incorporated, is petitioner, and Commissioner of Internal Revenue is respondent, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 86 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said United States Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 13th day of July, A. D. 1945.

Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals, Fifth Circuit.

(9593)

[fol. 102] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed February 11, 1946

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Jackson took no part in the consideration or decision of this application.

Endorsed on Cover: File No. 50,064. U. S. Circuit Court of Appeals, Fifth Circuit. Term No. 361. Burton-Sutton Oil Company, Incorporated, Petitioner, vs. Commissioner of Internal Revenue. Petition for a writ of certiorari and exhibit thereto. Filed August 23, 1945. Term No. 361 O. T. 1945.